

From: [Latham, Ray \(ECY\)](#)
To: matthew142@msn.com
Cc: [Reed, Catherine D. \(ECY\)](#); [Pongkhamsing, Chan](#); Dale.J.Jordan@usace.army.mil; cliff.bennett@co.yakima.wa.us
Subject: RE: EPA permit for Shaw Creek
Date: Wednesday, February 03, 2016 11:43:10 AM

Mr. Seaman: I received a copy of your attached email about the erosivity waiver from EPA. The waiver is a function of the NPDES Construction Stormwater General Permit. This permitting process is delegated by EPA and the Washington legislature to Ecology for management. Information about this permit and its various nuances may be found on Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html>. The easy way to find the site is to do an internet search for Washington Construction Stormwater. Look for a web address that includes "ecy.wa.gov".

The Erosivity Waiver is a Clean Water Act permitting process for construction sites that meets 3 specific criteria. The first two are that project must have between 1 ac. and 5 ac. of the disturbed ground, from outside of the stream bed area, that discharges to waterway. The third criteria is the a calculation of erosivity (known as the R factor) must be less than 5. This calculation includes a value based on the regional zone of rainfall as identified on a map, and the duration of exposed ground is also taken into account. The longer the construction period, the greater the risk of having a rain event that would produce a discharge. The details are provided on EPA Construction Rainfall Erosivity Waiver web site. <http://www.epa.gov/sites/production/files/2015-10/documents/fact3-1.pdf>. Sites over 1 ac of disturbed ground that have potential to discharge that do not meet these criteria may need to apply for a Construction Stormwater Permit. At this time an application for an Erosivity Waiver or an NPDES Construction Stormwater Permit for a project on Shaw Creek has not been received by the Dept. of Ecology.

This waiver is not a 'get of jail free' card. The site must comply with the Clean Water Act by preventing a contaminated stormwater discharge to waters of the state. This can be accomplished by using various Best Management Practices (erosion and sediment controls) to effectively prevent dirt and other contaminants from being discharged. This permit only addresses stormwater runoff and control from a construction site outside of the stream bed. My jurisdiction does not extend to disturbed ground in the channel. Activity in this area is regulated through separate zoning and permitting processes through a variety of local, state and federal agencies. Cathy Reed with the Shoreland and Environment Assistance Ecology program can answer questions about this. Cathy's contacts are craj461@ecy.wa.gov and at 509.575.2616.

You may give me a call if you have questions on this permit.

Ray Latham, CPSWQ
Stormwater Inspector
Water Quality Section
509.575.2807

-----Original Message-----

From: Reed, Catherine D. (ECY)
Sent: Tuesday, February 02, 2016 5:02 PM
To: Latham, Ray (ECY)
Subject: FW: EPA permit for Shaw Creek

I think the "low erosivity waiver" is a phrase out of the stormwater permitting process, isn't it? If so, please get back to Chan Pongkhamsing. Thanks!

Catherine Reed, PWS
Washington State Dept. of Ecology
1250 West Alder Street
Union Gap, WA 98903

(509) 575-2616
craj461@ecy.wa.gov

Please note our new address.

-----Original Message-----

From: Pongkhamsing, Chan [<mailto:Pongkhamsing.Chan@epa.gov>]
Sent: Monday, February 01, 2016 4:04 PM
To: Reed, Catherine D. (ECY); Dale J (Jess) NWS Jordan (Dale.J.Jordan@usace.army.mil)
Cc:
Subject: FW: EPA permit for Shaw Creek

Hi Catherine and Jess,

Please see Mr. Seaman's email below... apparently, he's pursuing a citizen's lawsuit on this issue. I'm not aware of any "Low Erosivity Waiver Certification" here at the EPA. Before I contact my colleagues other programs like TMDL, Water Quality, NEPA, and/or even CWA 402.. do you know about this requirement or have any updates since we last discussed this complaint a year ago? Attached is our latest communication on the matter. Based on Cathy's findings, I believe we all decided not to pursue further investigations.

Respectfully,

Chan Pongkhamsing
CWA 404 Enforcement Coordinator
Office of Ecosystems, Tribal and Public Affairs U.S. EPA, Region 10
1200 Sixth Avenue, Mail Stop ETPA-202-2
Seattle, Washington 98101-3140
(206) 553-1806

-----Original Message-----

From: MATTHEW SEAMAN [<mailto:matthew142@msn.com>]
Sent: Thursday, January 28, 2016 7:09 PM
To: Pongkhamsing, Chan <Pongkhamsing.Chan@epa.gov>
Subject: EPA permit for Shaw Creek

To: Chan Pongkhamsing
From: Matthew Seaman (matthew142@msn.com)
Date: January 27, 2016

Hello. We spoke on the phone several months ago about Clean Water Act violations along Shaw Creek in the West Valley of Yakima.

Perhaps you could help with a related matter. Who would be the individual at the EPA involved with a "Low Erosivity Waiver Certification"?

Project proponents for the "Shaw Creek Flood Mitigation Project" indicate that they will be requiring a "Low Erosivity Waiver Certification - EPA"

. Issuance of this waiver will facilitate a scheme to avoid enforcement of the federal CWA. For this reason, it is important that hard evidence, testimony, photographs and diagrams regarding the flood project be sent to the correct individual at the EPA.

Please let me know if you have some information that can help me with this EPA permitting issue.

We previously discussed the Shaw Creek environmental crimes; I now have a great deal of evidence affirming violations of the federal Clean Water Act by the developer (Bainter). These are: relocation of Shaw Creek into a man-made ditch without issuance of a COE 404 Fill & Dredge permit; filling of wetlands; filling of the Shaw Creek

watercourse; dewatering of Shaw Creek; destruction of a delineated wetland; submission of multiple falsified JARPs in association with CWA violations; participation in a scheme for enrichment following CWA violations; participation in a scheme to avoid enforcement of the federal CWA; and participation in a scheme for fraudulent conveyance following CWA violations. Needless to say, it required a great deal of time and effort to obtain the evidence and proceed towards a Citizen's Lawsuit. In very short order, the NOI will be delivered which will start the 60-day clock for the issuance of the lawsuit. As a result of this litigation, I fully expect that restoration of Shaw Creek, restoration of wetlands, and restoration of other critical areas will occur at the site.